In the United States District Court
For the Northern District of Georgia
Atlanta Division

Rev. MARKEL HUTCHINS,	)	
	)	
	)	
Plaintiff	)	Civil Action File No.
	)	
v.	)	1:12-CV-1222-TWT
	)	
HON. NATHAN DEAL, *et.al.*,	)	
Defendants	)	

BRIEF IN SUPPORT OF INTERVENOR'S MOTION TO DISMISS

Introduction

Intervenor filed a Motion to Intervene on April 19, 2012. In anticipation of the Court's granting such Motion, Intervenor now moves to dismiss pursuant to Fed.R.Civ.Proc. 12(b)(1)). Intervenor will show that Plaintiff utterly lacks any semblance of standing to bring his case and thus this Court has no jurisdiction to proceed.

Argument

I. Plaintiff Lacks Standing

Article III, Section 2 of the Constitution limits the jurisdiction of the federal courts to "cases" and "controversies." Courts do not render advisor opinions.

"The party invoking federal jurisdiction bears the burden of proving standing." *Bischoff v. Osceola County Florida*, 222 F.3d 874, 878 (11th Cir. 2000), *citing* *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

> Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements: First, the plaintiff must have suffered an injury in fact – an invasion of a legally-protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative that the injury will be redressed by a favorable decision. The party invoking federal jurisdiction bears the burden of establishing these three elements.

Lujan, 504 U.S. at 560-561 (internal citations and quotation marks omitted). Intervenor will discuss each element in turn.

I.A. Plaintiff Has Suffered No Injury

Plaintiff doe s not claim to have suffered an injury. Instead, he vaguely claims that the so-called "stand your ground law," O.C.G.A. § 16-3-24.1 (the "Statute"), exposes him to "risk of arbitrary enforcement." Doc. 1, ¶ 11. Plaintiff does not allege that the Statute has affected him in any way. He does not claim he has changed taken any action or refrained from taking any action as a result of the statute. He does not allege any facts or even any groundless conclusions that would lead the Court to believe that the Statute will have any more effect on him

than on the public at large. He only speculates that he may someday experience the effects of the statute.

Plaintiff therefore fails on virtually every component of the first prong of the *Lujan* test. He has suffered no actual injury. He does not allege any facts by which conclude that an injury is imminent. Any injury he may suffer in the future is completely speculative or hypothetical. It is not particularized to him, as he claims to stand in the same shoes as all Georgians. Doc. 1, ¶11. He does not like the law and wishes it did not exist, but it has no bearing on his life beyond that.

I.B. There is No Causation

It goes without saying that without an injury there can be no causation. Assuming *arguendo,* however, that Plaintiff is imminent likely to be affected by the statute, he cannot trace his injury to Defendants. It will be necessary to construct a hypothetical scenario in order to illustrate this point. Say that Plaintiff becomes involved in a confrontation with a third party. The confrontation turns violent and the third party shoots Plaintiff. The third party claims to have acted in self defense in reliance on the Statute.

In such a scenario, Plaintiff might argue that he was injured as a result of the third party's reliance on the Statute (it is somewhat difficult to say that such an argument has merit, but we will assume for the sake of this discussion that it does). The injury in such a case would be fairly traceable to the third party, to be sure.

Neither the Attorney General nor the Governor, however, would have any involvement in a potential criminal prosecution of the third party. Neither Defendant would have any power to interfere in the decision to charge or not to charge the third party with any crime.

Instead, the decision of whether the third party properly invoked the Statute would rest initially with the district attorney in the county where the incident took place. If the district attorney decided to prosecute, then the decision of whether the third party had a valid "stand your ground" defense would rest initially with the presiding superior court judge, ultimately, with a jury. Again, neither the Attorney General nor the Governor have any role in the decision making process for superior court judges (or with juries).

I.C. The Injury Is Not Redressable Against Defendants

Again, because there is no injury, there is nothing to redress. But, again assuming *arguemdo* that there is an injury, it could not be redressed against the two Defendants. The Complaint is written as a pre-enforcement challenge to a criminal statute. But the Statute is not a criminal provision in the typical sense, in that it proscribes conduct under threat of penal action. Instead, the Statute describes some parameters of an affirmative defense to a criminal prosecution. That is, "enforcement" of the Statute takes the form of an invocation by a criminal defendant of the affirmative defense.

Taking this case to its logical conclusion, say that the Court agreed with Plaintiff and ordered the relief Plaintiff seeks (a declaration that the Statute is unconstitutional and an injunction prohibiting ***Defendants*** from enforcing it). Then say that a person charged with a crime invoked the Statute in his defense. He would not have been a party to the instant case. He would not have had an opportunity to argue in favor of the Statute's legitimacy. No estoppel principle would apply to him. An injunction against state officials from "enforcing" the Statute would have no effect on a criminal defendant's ability to invoke the Statute. In that respect, no matter what relief this Court might order against the named Defendants, Plaintiff still will be exposed to whatever "threat of injury" he can prove he is exposed to today. .

Conclusion

Plaintiff cannot meet any, let alone all, the elements for standing. This Court therefore lacks subject matter jurisdiction to proceed and must therefore dismiss this case.

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CERTIFICATE OF SERVICE

I certify that on April 20, 2012 I served a copy of the foregoing using the ECF system upon:

Robert H. Patillo, II
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and via U.S. Mail upon

The Hon. Sam Olens
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/s/ John R. Monroe
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